TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM [redacted] 1934

No. ~~876~~ 4

CLAIRE A. WARNER, ADMINISTRATRIX OF THE ESTATE OF JOHN M. WARNER, DECEASED, PETITIONER,

vs.

EDWARD F. GOLTRA, DOING BUSINESS UNDER THE STYLE AND NAME OF THE GOLTRA BARGE LINE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

PETITION FOR CERTIORARI FILED MARCH 16, 1934

CERTIORARI GRANTED APRIL 9, 1934

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No.

CLAIRE A. WARNER, ADMINISTRATRIX OF THE ESTATE OF JOHN M. WARNER, DECEASED, PETITIONER,

vs.

EDWARD F. GOLTRA, DOING BUSINESS UNDER THE STYLE AND NAME OF THE GOLTRA BARGE LINE.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original	Print
Proceedings in Supreme Court of Missouri	1a	1
Caption (omitted in printing)	1a	
Record from Circuit Court of City of St. Louis	1b	1
Judgment	1b	1
Order allowing appeal	1b	1
Clerk's certificate (omitted in printing)	1c	
Appellant's abstract of record	1	2
Record statement	1	2
Plaintiff's second amended petition	2	2
Defendant's demurrer	8	7
Defendant's demurrer sustained	8	7
Plaintiff's term bill of exceptions	8	7
Election of plaintiff to stand upon her second amended petition	11	9
Judgment	11	9
Affidavit of appeal	12	9
Appeal granted	13	10
Appeal bond filed	13	10
Minute entry of argument and submission	15	10
Judgment	15	11
Opinion, Tipton, J.	16	11
Clerk's certificate (omitted in printing)	24	
Order allowing certiorari	**26**	**19**

[fols. a & 1a] [Caption omitted]

[fol. 1b]

IN CIRCUIT COURT OF CITY OF ST. LOUIS

114509-B

CLAIRE A. WARNER, Administratrix of the Estate of John M. Warner, Deceased,

vs.

EDWARD F. GOLTRA, Doing Business under the Style and Name of The Goltra Barge Line

JUDGMENT—Feb. 2, 1929

It is ordered that this cause be assigned to Division No. 1.

Now at this day this cause coming on for hearing, come the parties hereto by their respective attorneys, and upon motion, it appearing to the satisfaction of the Court that the defendant's demurrer to the second amended petition has been sustained, and plaintiff declining to plead further, it is ordered and adjudged by the Court that plaintiff's cause of action be and the same is hereby dismissed, that plaintiff take nothing by her petition herein, and defendant recover of plaintiff her costs and other charges herein expended, and have therefor execution.

IN CIRCUIT COURT OF CITY OF ST. LOUIS

[Title omitted]

ORDER ALLOWING APPEAL—Feb. 2, 1929

Now at this day comes the plaintiff by attorneys and upon motion and for good cause shown, the Court doth grant plaintiff ten days after the close of the December 1928 Term of this Court within which to file her appeal bond, conditioned according to law in the penal sum of $250.00, with surety to be approved by the Court, Judge or Clerk thereof in vacation.

[fol. 1c] Thereupon, plaintiff files and presents to the Court her affidavit for appeal and prays an appeal to the Supreme Court of Missouri, and the Court having seen and examined the same, doth order that an appeal be and is hereby allowed plaintiff to the Supreme Court of Missouri from the judgment or decision of the Court heretofore rendered.

Clerk's Certificate to foregoing papers omitted in printing.

[fol. 1] IN SUPREME COURT OF MISSOURI, DIVISION No. 2, OCTOBER TERM, 1930

No. 29,648

CLAIRE A. WARNER, Administratrix of the Estate of John M. Warner, Deceased, Appellant (Plaintiff),

vs.

EDWARD F. GOLTRA, Doing Business under the Style and Name of the Goltra Barge Line, Respondent (Defendant)

Appeal from the Circuit Court of the City of St. Louis, Mo., Honorable Claude O. Pearcy, Judge

Appellant's Abstract of the Record—Filed April 8, 1931

Claire A. Warner, administratrix of the estate of her husband, John M. Warner, deceased, instituted her suit against Edward F. Goltra, doing business under the style and name of the Goltra Barge Line, in the Circuit Court, City of St. Louis, Missouri, on the 15th day of March, 1927, [fol. 2] where it was numbered and known as cause No. 114,-509. Plaintiff's first amended petition was filed by leave of said Court on February 18, 1928. Plaintiff's second amended petition was filed by leave of said Court on May 28, 1928, and is as follows, to wit (caption and signature being omitted):

PLAINTIFF'S SECOND AMENDED PETITION

Comes now the plaintiff in the above-styled cause of action, and leave of Court having been first had and obtained, files this, her second amended petition, and states that she

is and at all times hereinafter mentioned was a resident of the City of Memphis, State of Tennessee; that plaintiff was duly appointed administratrix C. T. A. of the estate of her late husband, John M. Warner, deceased, by the Probate Court of Shelby County, Tennessee, on May 26th, 1926, and has duly qualified as such administratrix and is now acting in that capacity. Plaintiff further states that she was married to the late John M. Warner on or about the 18th day of July, 1917, and that they thereafter lived together as husband and wife until the wrongful death of said John M. Warner, deceased, on May 11, 1926; that the plaintiff is suing as the personal representative of her late husband, the aforesaid John M. Warner, in behalf of herself, as his widow, and Claire Warner, their daughter and only child of said union.

Plaintiff further states that on or about May 11th, 1926, the defendant was and now is a resident and citizen of the City of St. Louis, State of Missouri, had then and now has his office and principal place of business in said city and state, and that on or about the said 11th day of May, [fol. 3] 1926, and at all times hereinafter mentioned, the defendant was doing business under the style and name of the "Goltra Barge Line" and was a common carrier engaged in carrying freight in interstate commerce on the Ohio and Mississippi Rivers, and that on that date the defendant, as such common carrier, operated, managed, maintained and navigated in such interstate commerce on said rivers a certain vessel named "Iowa".

Plaintiff further states that for some time prior to said May 11th, 1926, and on that date and at all times hereinafter mentioned the said John M. Warner, deceased, was employed and engaged by the said defendant to serve and was serving on board the said vessel "Iowa" as a seaman and in the capacity of captain or master, and that it was his duty acting in the course of his employment as an employe of the said defendant and as the result of specific orders of the defendant to be on board the said vessel "Iowa" and to do all things which are required by custom and law of the duly licensed captain or master of the "Iowa."

Plaintiff further states that the presence of said John M. Warner on board the said "Iowa" on said May 11th, 1926, in the capacity of captain or master, was required by Sec-

tion 222, Title 46, of Mason's U. S. Code Annotated 1926, which, in part, provides as follows:

"No vessel of the United States subject to the provision of this chapter or chapters 14 and 15 or to the Inspection Laws of the United States shall be navigated unless she shall have in her service and on board such complement of licensed officers and crew including certificated life-boat [fol. 4] men, separately stated, as may in the judgment of the local inspectors, who inspect the vessel, be necessary for her safe navigation."

And by the rules and regulations of the Steamboat Inspection Service of the Department of Commerce, which rules and regulations are by Section 375 of Title 46 of Mason's U. S. Code Annotated 1926, given the force and effect of laws.

Plaintiff further states, however, that on said May 11th, 1926, the said John M. Warner, although he had a license to act as captain or master on both the Ohio and Mississippi Rivers, did not have power or authority or a license to act as a pilot for the said "Iowa" while it was being navigated, managed and operated on the Ohio River as aforesaid, and that this fact was well known to the said defendant.

Plaintiff further states that said defendant was required by said Section 222 of Title 46 of Mason's U. S. Code Annotated 1926, and by the rules and regulations of the Steamboat Inspection Service of the Department of Commerce, to employ a duly licensed pilot to operate, navigate, manage and control the said "Iowa" while it was on the Ohio River on said May 11th, 1926, and that defendant had complied with this section of the statute and these rules and regulations.

Plaintiff further states that although said John M. Warner was on board the said "Iowa" as aforesaid, and was acting in the course of his employment and scope of his duties as captain or master on said date, as aforesaid, he was not acting as pilot and could not so act under Section 224, Title 46, of Mason's U. S. Code Annotated 1926, which [fol. 5] forbids any person to serve as a pilot of any steamer who is not licensed by the Steamboat Inspection Service of the Department of Commerce, and by the rules and regulations of said service; and he was not in charge of

the actual operation, navigation and management of the said "Iowa" on said date, but that these duties were then being performed by the pilot who was employed and engaged by said defendant to serve on board the said "Iowa," but who was not under the direction or control of said John M. Warner and could not be in view of Section 28 of Rule 5 of the General Rules and Regulations prescribed by the Steamboat Inspection Service of the Department of Commerce, which rule had the force and effect of law as aforesaid, and which provided as follows:

"Pilots of steam vessels, while in the discharge of their duties, shall be governed by the rules of the board of supervising inspectors, made for their guidance, and not by any instructions emanating from any inspector or other person";

and by the other servants, agents and employes of the said defendant and who were then on board the said "Iowa."

Plaintiff further states that on said May 11th, 1926, and at the exact moment of the hereinafter mentioned collisions, while said John M. Warner was employed by said defendant and was serving on board the said "Iowa" as captain or master in the course of his employment for the defendant, as aforesaid, and while he was engaged in interstate commerce, and while the said "Iowa," operated, managed and controlled and navigated, as aforesaid, was actually being used in interstate commerce, the defendant, by and through his agents, servants and em-[fol. 6] ployes, was using the said vessel "Iowa" to tow or push several barges of freight from points in the State of Pennsylvania to points on the Mississippi River in the State of Louisiana; that at this time the water in the said Ohio River was dangerously low, but that, in accordance with the express instructions of the defendant, the agents, servants and employes of the said defendant were ordered by him to continue the said voyage; that when the said "Iowa" operated, as aforesaid, and the barges towed or pushed by it reached a point on said Ohio River near the Town of Stevensport, Kentucky, some of the barges became grounded due to the lowness of the water; that while said "Iowa" was being navigated, used and controlled by the agents, servants and employes of the said defendant,

other than said John M. Warner, to unground the said barges so that the said voyage might continue, the said agents, servants and employes of the defendant, other than the said John M. Warner, and independently of him and while said John M. Warner was not cognizant of exactly what was being done on all parts of the said "Iowa" so negligently, carelessly, recklessly and unskillfully handled, used, controlled, operated and navigated the said "Iowa" that they caused the said "Iowa" to collide forcibly and violently with the said barges and the bank of the Ohio River; that at this time the said John M. Warner was attempting to save his own life and the lives of those on board the said "Iowa" and was attempting to save the property of the defendant from further injury; that as a direct and proximate result of said collision and the violent jar resulting therefrom and caused thereby, caused as aforesaid by the negligence of the defendant, his agents, [fol. 7] servants and employes other than the said John M. Warner, the said John M. Warner was thrown from said "Iowa" into the waters of the said river and was thus caused to drown.

The plaintiff states that the death of said John M. Warner was directly and proximately caused by the negligence and unskillfulness of the defendant, his agents, servants and employes as aforesaid.

Plaintiff further states that immediately prior to his death, and for many years prior thereto, the said John M. Warner was a strong, healthy man of temperate and industrious habits; that at the time of his death he was 35 years of age, was earning as an employe of the said defendant a salary which averaged approximately $375 a month, and was the sole support of plaintiff, his wife, then 29 years of age, and Claire Warner, his daughter and only child, then 8 years of age, who now survive him.

Plaintiff further states that at the time of the wrongful death of the said John M. Warner she and her daughter were wholly dependent upon and had a present pecuniary interest in the life of the said John M. Warner, deceased, and by his death have been deprived of and thereby suffered and will suffer in the future the pecuniary loss of the society, consortium, maintenance, support, assistance and contribution of deceased, and said child has been deprived of, suffered, and will in the future suffer, the pecuni-

ary loss of her father's care, advice, counsel, education, training and support.

Wherefore, plaintiff prays judgment against said defendant for the sum of fifty thousand dollars ($50,000) and for the costs of this suit.

[fol. 8] On July 31, 1928, the defendant filed his demurrer to plaintiff's second amended petition in words and figures as follows (caption and signature being omitted):

DEFENDANT'S DEMURRER

Comes now the above-named defendant and demurs to plaintiff's second amended petition herein filed, and for grounds for said demurrer says that said second amended petition fails to state facts sufficient to constitute a cause of action against defendant.

DEFENDANT'S DEMURRER SUSTAINED

On December 31, 1928, and during the December Term, 1928, of said Circuit Court, the said Circuit Court, by an order duly entered of record, sustained defendant's demurrer to plaintiff's second amended petition.

On February 2, 1929, and during said December Term, 1928, plaintiff presented and filed with said Circuit Court her term bill of exceptions which had been signed and approved by Judges Granville Hogan and Claude O. Pearcy and which reads in words and figures as follows (caption being omitted):

PLAINTIFF'S TERM BILL OF EXCEPTIONS

Be it remembered, that on the 15th day of March, 1927, at the April Term, 1927, of said court, plaintiff instituted this suit against the above-named defendant and filed herein her petition, which petition in words and figures is as follows:

(Clerk here copy said petition on file.)

[fol. 9] Be It Further Remembered, That on the 18th day of February, 1928, at the February Term, 1928, of said court plaintiff, by leave of Court, filed herein her first amended petition, which first amended petition in words and figures is as follows:

(Clerk here copy said first amended petition.)

Be It Further Remembered, That on May 28, 1928, at the April Term, 1928, of said court, plaintiff, by leave of

Court, filed herein her second amended petition, which second amended petition in words and figures is as follows:

(Clerk here copy said second amended petition on file.)

Be Is Further Remembered, That on July 31, 1928, at the June Term, 1928, of said court, the defendant filed herein his demurrer to the plaintiff's said second amended petition, which said demurrer in words and figures is as follows:

(Clerk here copy defendant's demurrer to plaintiff's second amended petition on file.)

And Be It Further Remembered, That thereafter, on December 31, 1928, in Division No. 1 of said court, it being one of the days of the regular December Term, 1928, of said court, said demurrer of the defendant to the aforesaid second amended petition of plaintiff, coming on to be heard by the Court, was by the Court considered and sustained; to which action, ruling and order of the Court in sustaining said demurrer the plaintiff, by her counsel, then and there and at the time duly excepted and saved her exception and still excepts.

[fol. 10] Now, therefore, that the above matters and things and the action of the Court in sustaining said demurrer to the plaintiff's said second amended petition may be made a part of the record in this cause the plaintiff presents to said Court this, her bill of exceptions, and prays that the Court sign, seal, allow, approve and order the same placed of record in this cause, which is accordingly done the 2nd day of February, 1929, one of the regular days of the regular December Term, 1928, of said court.

Granville Hogan, Judge Presiding in Division No. 1 of the Circuit Court of the City of St. Louis, Missouri, Before Whom Said Demurrer to Said Second Amended Petition of the Plaintiff Was Heard and Who Sustained the Same. (Seal.)

Claude O. Pearcy, Judge Presiding in Division No. 1 of the Circuit Court of the City of St. Louis, Missouri, on the Date of the Signing and the Filing of This Bill of Exceptions. (Seal.)

All objections to this bill of exceptions hereby waived on this 2nd day of February, 1929.

Jos. T. Davis, Attorney for the Defendant.

(For the sake of brevity plaintiff's second amended petition and defendant's demurrer thereto, which have been previously quoted in this abstract of record, are not recopied in this term bill of exceptions.)

[fol. 11] Subsequently on said 2nd day of February, 1929, and at the said December Term, 1928, said cause was assigned to Division No. 1 of said Circuit Court and plaintiff filed therein her election to stand upon said second amended petition, which in words and figures is as follows (caption and signature being omitted):

ELECTION OF PLAINTIFF TO STAND UPON HER SECOND AMENDED PETITION

Comes now the plaintiff in the above-entitled cause, by her attorneys, and states that, whereas this Honorable Court on the 31st day of December, 1928, sustained defendant's demurrer to plaintiff's second amended petition filed in the above-entitled cause, and,

Whereas, said plaintiff excepted to the ruling of said Court, and still does so except, and has filed herein her term bill of exceptions, this plaintiff does hereby refuse to plead further in said cause as she has been injured by the erroneous order and action of this Court.

JUDGMENT

Thereafter, on said date and at the same December Term, 1928, the said Circuit Court rendered judgment in this cause in favor of the defendant and against the plaintiff.

Thereafter, on said date and during the same December Term, 1928, the plaintiff duly filed her affidavit for appeal in words and figures as follows (caption being omitted):

[fol. 12] AFFIDAVIT OF APPEAL

Comes now Clifton Powell Fordyce, of lawful age, being duly sworn upon his oath, states that he is agent for the plaintiff in the above-entitled cause, and, as such, is authorized to make this affidavit for and in plaintiff's behalf, and says that the appeal prayed for in the above-entitled

cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the Court.

Clifton Powell Fordyce.

Subscribed and sworn to before me this 2nd day of February, A. D. 1928. Madeline G. Kelly, Notary Public. My commission expires June 24, 1932. (Seal.)

ORDER ALLOWING APPEAL

Whereupon, on said date and at said term, the said Circuit Court granted the plaintiff ten days after the close of said December Term, 1928, to file her appeal bond in the sum of $250.00, with a surety to be approved by said court; duly approved the plaintiff's affidavit of appeal; and duly granted plaintiff an appeal to the Supreme Court of Missouri.

Thereafter and on February 9, 1929, said Court granted the plaintiff ten days additional time in which to file said appeal bond. On said date, also, Messrs. Wilson, Gates and Armstrong, by leave of Court, duly entered their appearance as associate counsel for the plaintiff.

[fols. 13 & 14] Thereafter and on February 12, 1929, the plaintiff duly filed her said appeal bond, which was on that day approved by said Circuit Court of the City of St. Louis, Missouri.

Respectfully submitted, Fordyce, Holliday & White; Wilson, Gates & Armstrong, Attorneys for the Appellant.

[fol. 15] IN SUPREME COURT OF MISSOURI

[Title omitted]

MINUTE ENTRY—May 9, 1933

Come now the said parties, by attorneys, and after arguments herein, submit this cause to the Court.

IN SUPREME COURT OF MISSOURI

CLAIRE A. WARNER, Administratrix of the Estate of John M. Warner, Deceased, Appellant,

vs.

EDWARD F. GOLTRA, Doing Business Under the Style and Name of The Goltra Barge Line, Respondent

Appeal from the Circuit Court of the City of St. Louis

JUDGMENT—Dec. 20, 1933

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellant costs and charges herein expended and have therefor execution. (Opinion filed.)

[fol. 16] IN SUPREME COURT OF MISSOURI, DIVISION NUMBER TWO, SEPTEMBER TERM, 1933

No. 29648

CLAIRE A. WARNER, Administratrix of the Estate of John M. Warner, Deceased, Appellant (Plaintiff),

vs.

EDWARD F. GOLTRA, Doing Business under the Style and Name of the Goltra Barge Line, Respondent (Defendant)

OPINION—Filed Dec. 20, 1933

This is an action for damages for the wrongful death of John M. Warner. The appellant's second amended petition states that the appellant, who was the administratrix and widow of John M. Warner, deceased, brought this suit in her own behalf and in behalf of her infant daughter to recover $50,000.00 damages for the death of her husband against the respondent, Edward F. Goltra, doing business

under the style and name of the Goltra Barge Line. Warner was an employee of the respondent and acted as captain or master of the towboat Iowa at the time of his death on May 11, 1926. On that day the Iowa was proceeding in interstate commerce with several barges of freight down the Ohio River. Warner was on board the Iowa in the course of his employment and the scope of his duties and was engaged in interstate commerce but, as he had no license to act as a pilot on this river, the vessel was navigated by a duly licensed pilot. Appellant's petition alleges that due to the negligence of this pilot the barges towed or pushed by the Iowa became grounded. In attempting to unground them, so that the voyage might continue, the [fol. 17] pilot so negligently handled and navigated the Iowa that he caused it to collide forcibly with the barges and the bank of the river. As a result of the collision Warner was thrown from the Iowa into the river and was drowned. This action is brought under Section 33 of the Merchant Marine Act of June 5, 1920 (popularly known as the Jones Act), which gives seamen the same rights that railway employees have under the said Employers' Liability Act.

A general demurrer was filed to the appellant's second amended petition, which was sustained by the trial court. Thereafter judgment was entered in favor of the respondent. From this judgment the appellant has appealed to this court.

The appellant in her brief states that the sole issue for this court to decide may be stated as follows: "Did Congress intend to exclude the masters of vessels and their personal representatives from the remedial effects of Section 33 of the Jones Act?"

In other words the question is, does the word "seaman," as used in the Jones Amendment (June 5, 1920) to the Merchant Seamen, Chapter 18, making the "Federal Employers' Liability Act" applicable to seamen as it applies to employees of railroads, include the captain or master of a ship or vessel?

Section 33 of the Jones Act (which is Section 688 U. S. C. A., Title 46) is as follows:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury,

and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be ap- [fol. 18] plicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. (Mar. 4, 1915, c. 153, section 20, 38 Stat. 1185; June 5, 1920, c. 250, section 33, 41 Stat. 1007.)"

To determine whether or not the word "seaman" includes the word "master" it is necessary for us to determine what Congress had in mind when it enacted Section 713 of this Chapter. In this section Congress defined certain words that are used in this Chapter. It reads as follows:

"In the construction of this chapter, every person having command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman'; and the term 'vessel' shall be understood to comprehend every description of vessel navigating on any sea or channel, lake or river, to which the provisions of this chapter may be applicable, and the term 'owner' shall be taken and understood to comprehend all the several persons, if more than one, to whom the vessel shall belong."

Appellant cites various occupations on board a vessel which the courts have held to be those of a seaman. For instance, an owner of an orchestra was held to be a seaman. The Sea Lark, 14 Fed. (2nd) 201. An engineer of a dredging barge was held to be a seaman. City of Los Angeles v. United Dredging Co., 14 Fed. (2nd) 365. So was a watchman in Grimberg v. Admiral Oriental Steamship Line, 300 Fed. 619, and many other cases are cited to show that the word "seaman" has a broader meaning than it had origi-

nally. In the days of sailing vessels, the word "seaman" meant one who could "hand, reef and steer," but the courts in attempting to keep up with changed conditions of navigation gave it an enlarged meaning. Meyer v. Dollar Steamship Line, 43 Fed. (2nd) 425.

The appellant, also, cites cases showing that masters [fol. 19] have been held to be seamen under different statutes than that under consideration.

In the case of Burns Bros., 29 Fed. (2nd) 855, it was held that a master was a seaman within the meaning of 28 U. S. C. A. 837 (June 12, 1917, C. 27, S. 1, 40 Stat. 157; July 1, 1918, C. 113, S. 1, 40 Stat. 683) which gave seamen the right to sue in Federal Courts to enforce laws made for their health and safety without prepayment of court costs.

In the case of In re Scott, 250 Fed. 647, the court held that the word "seaman" was broad enough to include "master" in matters of naturalization, and the court in the course of the opinion said: "It is manifest that the word 'seaman' might be used in different enactments in different senses, and the intended sense might appear from the context."

We are also cited to the case of The Balsa, 10 Fed. (2nd) 408, in which the court held that the master, injured in the service of the vessel, was entitled to recover, in libel, against her, the cost of his cure and maintenance. However, we do not believe that that case aids us much in construing the statute in question because the action was one not growing out of common law negligence, nor involving the construction of statutory law, but was one in admiralty.

We have examined the numerous other authorities cited by the appellant, but do not believe that they are sufficiently in point to burden this opinion by making reference to them, as none of them deal with the construction of the statute in question.

It is a general rule that in construing statutes or constitutions, the court may resort to extraneous matters to aid in arriving at a correct interpretation when, and only when, the meaning of the words used is ambiguous or uncertain. Hamilton v. St. Louis County Court, 15 Mo. 3; State ex rel. v. King, 44 Mo. 283; State ex rel. v. Gammon, 73 Mo. 421; State ex rel. v. Hitchcock, 241 Mo. 433, 146 S. W. 40.

In the case of State ex rel. v. The University of Missouri, 268 Mo. 598, 188 S. W. 126, we said:

"In such case we are not permitted for the purpose of [fol. 20] attempting to discover some hidden, some occult intent of the people, to resort to documents other than the constitution itself. It is only in case the meaning remains in doubt after the whole instrument is examined that the court may turn to extrinsic facts for aid in interpretation. When the words used themselves permit of no doubt as to the meaning, that ends the matter. There is no room for construction."

In Section 713, supra, Congress defines terms as used in this Chapter, namely, "master," "seaman," vessel" and "owner." By this section, the term "master" shall be deemed to be every person having the command of any vessel belonging to any citizen of the United States, and the term "seaman" is deemed to be every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the vessel. And then this section defines the terms "vessel" and "owner." This section distinguishes "master" from "seaman" as clearly as it does "vessel" from "owner." "Master" is defined to the exclusion of all others employed or engaged to serve in any capacity on board the vessel. We believe that the term "master" is used as separately and distinctly from the term "seaman" as if the act read: "Every person having the command of any vessel * * * shall be deemed to be the 'master' " and every other "person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman.' "

We believe that the words used in this section are not ambiguous or uncertain. Congress clearly expressed in the words it used in this section just what it intended and there is no room for construction.

The first part of Section 713, supra, says, "In the construction of this chapter;" then this section defines "master," and "seaman." The reading of this Chapter clearly shows that Congress had in mind the distinction between "master" and "seaman," and that the term "seaman" did not include the word "master."

To illustrate, in the following sections of this Chapter that the term "seaman" does not include "master" is [fol. 21] clearly shown by the context thereof. Section 561 says, "That the master to whom such boy (apprentice) is to be bound is a proper person for the purpose." Section 564 states that the master of every vessel bound from a port in the United States to any foreign port shall before he proceeds on such voyage make an agreement in writing or in printing with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned; and every such agreement shall as nearly as possible be in the form given in the table marked "A," in the schedule annexed to this Chapter, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same. Section 565, among other things, states: "When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping commissioner, and the other part shall contain a special place or form for the description and signatures of persons engaged subsequently to the first departure of the ship, and shall be delivered to the master." Section 571 is as follows: "Every master who engages any seaman in any place in which there is a consular officer, otherwise than as required by the proceding section, shall incur a penalty of not more than One Hundred Dollars, for which penalty the vessel shall be held liable." The first part of schedule "A," referred to in this section, reads as follows: "It is agreed between the master and the seaman or mariners of the —, of which — is at present master, or whoever shall go for master, now bound from the port of —, to —, 1. —."

The schedule and sections referred to above clearly show that the term "seaman" does not include the term "master." We, therefore, believe that Congress clearly intended to distinguish "master" from "seaman" and that the word "seaman" does not include the word "master" so as to give the master cause of action under Section 688 of this Chapter. Nor do we believe that the fact that the vessel was temporarily in charge of the pilot, at the time of the collision that caused Warner to be thrown into the river, would change the status of the captain or master to that of a seaman. He was still in command of the vessel, except insofar as her navigation was concerned.

In the case of The Oregon, 158 U. S. 168, 39 L. Ed. 943, 15 [fol. 22] Sup. Ct. Rep. 804, the United States Supreme Court said:

"Nor or we satisfied with the conduct of the master in leaving the pilot in sole charge of the vessel. While the pilot doubtless supercedes the master for the time being in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation; the master is not wholly absolved from his duties while the pilot is on board, and may advise with him, and even displace him in case he is intoxicated or manifestly incompetent. He is still in command of the vessel, except so far as her navigation is concerned, and bound to see that there is a sufficient watch on deck, and that the men are attentive to their duties. The Iona, L. R. 1 P. C. 426.

The Batzvier, 1 Spinks, Eccl. 378, 383, it was said by Dr. Lushington: 'There are many cases in which I should hold that, notwithstanding the pilot has charge, it is the duty of the master to prevent accidents, and not to abandon the vessel entirely to the pilot; but that there are certain duties he has to discharge (notwithstanding there is a pilot on board) for the benefit of the owners.' In an official report made by a maritime commission in 1874, the Elder Brethren of Trinity House are said to have expressed the opinion 'that in well conducted ships the master does not regard the presence of a duly licensed pilot in compulsory pilot waters as freeing him from every obligation to attend to the safety of the vessel; but that, while the master sees that his officers and crew duly attend to the pilot's orders, he himself is bound to keep a vigilant eye on the navigation of the vessel, and, when exceptional circumstances exist, not only to urge upon the pilot to use every precaution, but to insist upon such being taken.' Marsden Collisions, 255."

We do not believe that the master can be considered a [fol. 23] seaman within the purview of Sections 688 and 713, supra; the trial court properly sustained the demurrer to appellant's petition. The judgment of the trial court is, therefore, affirmed.

All concur.

Ernest M. Tipton, Judge.

[fol. 24] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 25] INDEX

Transcript of judgment and order of Circuit Court allowing appeal to Supreme Court 1a

Appellant's Abstract of the Record 1

Index to Abstract of the Record 14

Submission of cause in Supreme Court 15

Judgment 15

Opinion 16

Certificate of Clerk of Supreme Court 24

[fol. 26] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 9, 1934

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.